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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE
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10 JACQUELYN A LE,

11 Plaintiff,

12 v.

13 FIREMANS FUND INSURANCE, et. al.

14 Defendants.

CASE NO. C13-517-MJP

ORDER ON MOTIONS TO DISMISS

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16 This matter comes before the Court on Defendants' Randy Hess, Fireman's Fund
17 Insurance Companies, and Barbara Christensen's unopposed motions to dismiss for lack of
18 jurisdiction, improper venue, and failure to state a claim where relief may be granted. (Dkt. Nos.
19 11, 17, 33.) Having reviewed the motions and related papers, the Court GRANTS the motions
20 and DISMISSES the case.

21 **Background**

22 Plaintiff's allegations consist of the following:

23 After requesting certified documentation in support of the medical trust
accounting approved in the Superior Court of California County of Placer Probate
24 Division case number SPR 5633 in connection with personal injury case number

1 375600 in the Superior Court of California County of Orange I was denied access
 2 to the certified documents. I discovered through investigation that I was never
 3 told by my attorneys Randy M. Hess and Barbara B. Christensen the amount of
 4 the settlement I was awarded for medical and punitive damages in the Superior
 5 Court of California County of Orange case number 375600. I have never received
 6 payment of the funds awarded and approved by the court for case number 375600
 7 heard in the Superior Court of the State of California in the County of Orange. I
 8 would like the Court to order the defendants to provide certified documentation of
 9 the court approved settlement for case number 375600 and documentation of
 10 payment of the judgment and certified documentation of disbursement of funds. I
 11 ask that the Court require the defendants to pay to me the amount I was awarded
 12 in judgment for case number 375600 in the Superior Court of California County
 13 of Orange which initially asked for \$6,500,000 Six Million Five Hundred
 14 Thousand Dollars.

15 (Dkt. No. 7.)

16 Analysis

17 Defendants move for dismissal on the grounds this Court lacks jurisdiction, venue is
 18 improper, and Plaintiff fails to state a claim. (Dkt. Nos. 11, 17, 33). Because the Complaint fails
 19 to allege facts to establish this Court's subject matter jurisdiction, the Court GRANTS the
 20 motions and DISMISSES the case.

21 A complaint must be dismissed under Fed.R.Civ.P.12(b)(1) if, considering the factual
 22 allegations in the light most favorable to the plaintiff, the action: (1) does not arise under the
 23 Constitution, laws, or treaties of the United States, or does not fall within one of the other
 24 enumerated categories of Article III, Section 2, of the Constitution; (2) is not a case or
 25 controversy within the meaning of the Constitution; or (3) is not one described by any
 26 jurisdictional statute. Baker v. Carr, 369 U.S. 186, 198 (1962); see 28 U.S.C. §§ 1331 (federal
 27 question jurisdiction); 1332 (diversity jurisdiction). When considering a motion to dismiss
 28 pursuant to Rule 12(b)(1), the court is not restricted to the face of the pleadings, but may review
 29 any evidence to resolve factual disputes concerning the existence of jurisdiction. McCarthy v.
 30 United States, 850 F.2d 558, 560 (9th Cir. 1988). A federal court is presumed to lack subject

1 matter jurisdiction until plaintiff establishes otherwise. Kokkonen v. Guardian Life Ins. Co. of
 2 America, 511 U.S. 375, 377 (1994). Therefore, plaintiff bears the burden of proving the
 3 existence of subject matter jurisdiction. Stock West, Inc. v. Confederated Tribes, 873 F.2d 1221,
 4 1225 (9th Cir. 1989).

5 When a motion is made pursuant to Fed.R.Civ.P. 12(b)(1), plaintiff has the burden of
 6 proving that the court has subject matter jurisdiction. Tosco Corp. v. Communities for a Better
 7 Environment, 236 F.3d 495, 499 (9th Cir. 2001). Plaintiff must demonstrate the existence of
 8 whatever is essential to federal jurisdiction, and, if plaintiff does not do so, the court, on having
 9 the defect called to its attention or on discovering the defect, must dismiss the case, unless the
 10 defect can be cured by amendment. Smith v. McCullough, 270 U.S. 456, 459 (1926).

11 Defendants argue dismissal is appropriate because Plaintiff fails to allege any facts to
 12 invoke this Court's jurisdiction. (Dkt. No. 11 at 3.) Indeed, absent from the Complaint is any
 13 basis for this Court to conclude it has jurisdiction. For example, although the complaint alleges a
 14 sufficient amount in controversy (\$6,500,000), the Complaint does not allege the parties are
 15 diverse, as required for jurisdiction under 28 U.S.C. §1332. Nor does the Complaint, on its face,
 16 raise a federal question or assert a claim against the United States. Although the motions advised
 17 Plaintiff of this jurisdictional problem, she failed to respond or otherwise attempt to cure the
 18 deficiencies. The Court therefore DISMISSES the case without prejudice.

19 Conclusion

20 Having determined this Court lacks jurisdiction, the Court GRANTS the motions (Dkt.
 21 Nos. 11, 17, 33) and DISMISSES the case.

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1 || The clerk is ordered to provide copies of this order to all counsel.

2 Dated this 30th day of July, 2013.

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Marsha J. Pechman
Chief United States District Judge